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Aug 14 2013

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Eastern District Of Louisiana
New Orleans, LA

Case MDL No. 2454 Document 78 Filed 08/07/13 Page 1 of 3

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATIONU.S. DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

FILED

AUG 7 2013

WILLIAM W. BLEVINS
CLERK

MDL No. 2454

IN RE: FRANCK'S LAB, INC.,
PRODUCTS LIABILITY LITIGATION

TRANSFER ORDER

SECT. N MAG. 4

Before the Panel: Pursuant to 28 U.S.C. § 1407, defendants Franck's Lab, Inc., and Franck's Pharmacy, Inc. ("Franck's") move for centralization of this litigation in the Eastern District of Louisiana. This litigation currently consists of 21 actions pending in six districts, as listed on Schedules A and B.¹ The actions listed on Schedule A primarily involve injuries allegedly caused by pharmaceutical products compounded by the Franck's defendants that were contaminated by fungus or other toxins and resulted in rare eye infections, blindness, and other injuries. Plaintiffs in these tort actions support centralization but request the Central District of California as the transferee district. The action listed on Schedule B is a declaratory judgment action by Evanston Insurance Company ("Evanston") concerning whether it has a duty to defend or indemnify Franck's in connection with the tort actions on Schedule A.

All responding defendants except Evanston support centralization.² Evanston represents that it is neutral as to the tort actions, but requests that transfer of the declaratory judgment action be denied. At the hearing session, all parties represented that the declaratory judgment action listed on Schedule B has reached an advanced stage, and should be excluded.

On the basis of the papers filed and the hearing session held, we find that the actions listed on Schedule A involve common questions of fact, and that centralization in the Eastern District Louisiana will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. All actions share factual questions relating to injuries arising from the alleged contamination of pharmaceutical products compounded and distributed by Franck's Lab and Franck's Pharmacy – primarily, Brilliant Blue G, Triamcinalone, and Avastin – which were the subject of recall notices issued from March through May 2012. Centralization will eliminate duplicative discovery; prevent inconsistent pretrial rulings; and conserve the resources of the parties, their counsel and the judiciary.

* Judge Sarah S. Vance took no part in the decision of this matter.

¹ The Panel has been notified of two related actions. These and any other related actions are potential tag-along actions. See Panel Rules 1.1(h), 7.1 and 7.2.

² The responding defendants are Wells Pharmacy Network and The Cincinnati Insurance Company.

Fee _____
Process _____
☒ Dktd _____
CtRmDep _____
Doc. No. _____

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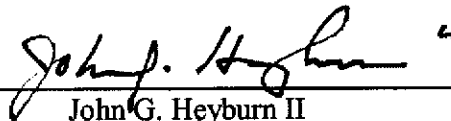
The Panel has reviewed the proceedings in the *Evanston Insurance* declaratory judgment action listed on Schedule B, and determined that it should be excluded in light of the advanced posture of the action. The court recently bifurcated proceedings on the duty to defend and duty to indemnify issues, and dispositive motions on the duty to defend are due this month. All parties are in agreement that, in light of these developments, the action should be excluded, and we agree.

We conclude that the Eastern District of Louisiana is an appropriate transferee district for this litigation. The four actions pending in this district are the most advanced of the tort actions, and this district is more conveniently located to Florida, the locus of events and witnesses. Judge Kurt D. Engelhardt is an experienced transferee judge who we are confident will steer this litigation on a prudent course.

IT IS THEREFORE ORDERED that pursuant to 28 U.S.C. § 1407, the actions listed on Schedule A and pending outside the Eastern District of Louisiana are transferred to the Eastern District of Louisiana and, with the consent of that court, assigned to the Honorable Kurt D. Engelhardt for coordinated or consolidated pretrial proceedings with the actions pending in that district and listed on Schedule A.

IT IS FURTHER ORDERED that transfer of the action listed on Schedule B is denied.

PANEL ON MULTIDISTRICT LITIGATION



John G. Heyburn II
Chairman

Kathryn H. Vratil
Marjorie O. Rendell
Lewis A. Kaplan

Paul J. Barbadoro
Charles R. Breyer

**IN RE: FRANCK'S LAB, INC.,
PRODUCTS LIABILITY LITIGATION**

MDL No. 2454

SCHEDULE A

Central District of California

13-5303 Cheryl Avakian v. Frank's Lab, Inc., et al., C.A. No. 2:13-01068
13-5304 Roy Romero, et al. v. Franck's Lab, Inc., et al., C.A. No. 2:13-01335
13-5305 Joseph Cotugno, et al. v. Franck's Compounding Lab, et al., C.A. No. 2:13-01360
13-5306 Migdalia Aguilar, et al. v. Franck's Lab, Inc., et al., C.A. No. 2:13-01371
13-5307 Levon Jingoian v. Franck's Lab, Inc., et al., C.A. No. 2:13-01468
13-5308 Sergio Hambav, et al. v. Franck's Lab, Inc., et al., C.A. No. 2:13-02058
13-5309 Ester Gonzalez, et al. v. Franck's Lab, Inc., et al., C.A. No. 2:13-02358
13-5311 Ema Arakelian v. Franck's Pharmacy Inc., et al., C.A. No. 2:13-02437
13-5312 Natividad Lopez v. Franck's Lab, Inc., et al., C.A. No. 2:13-02445
13-5313 Jim Hermanson, et al. v. Franck's Lab, Inc., et al., C.A. No. 5:13-00432

District of Colorado

13-5314 Randy Brown v. Franck's Lab, Inc., et al., C.A. No. 1:13-00846

Northern District of Indiana

13-5315 Josephine Bienick v. Franck's Lab, Inc., C.A. No. 1:12-00197
13-5316 Eldon Wayne McKinley v. Franck's Lab, Inc., C.A. No. 1:13-00060
13-5317 Bernice Tharp v. Franck's Lab, Inc., et al., C.A. No. 1:13-00061

Eastern District of Louisiana

Ruth Smith v. Franck's Lab, Inc., et al., C.A. No. 2:12-02398
Michele Laventhal v. Franck's Lab, Inc., et al., C.A. No. 2:12-02608
James Johnson, Jr. v. Franck's Lab, Inc., et al., C.A. No. 2:12-02738
Susan Kappelman, et al. v. Wells Pharmacy Network, L.L.C., et al., C.A. No. 2:12-02838

District of Nevada

13-5318 Howard McMaster v. Franck's Lab, Inc., et al., C.A. No. 3:13-00100
13-5319 Brenda Hess v. Franck's Lab, Inc., et al., C.A. No. 3:13-00121

SCHEDULE B

Middle District of Florida

Evanston Insurance Company v. Franck's Lab, Inc. et al., C.A. No. 5:12-00603